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2  
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 \* \* \*

6 JUSTIN ODELL LANGFORD,

Case No. 3:19-cv-00594-MMD-CSD

7 Petitioner,

ORDER

8 v.

9 WARDEN RENEE BAKER, et al.,

10 Respondents.

11 I. **SUMMARY**

12 This habeas matter is before the Court on Petitioner Justin Odell Langford's Motion  
13 for Stay and Abeyance (ECF No. 162) and Motions for Enlargement of Time (ECF Nos.  
14 166, 167, 168, 169). For the reasons discussed below, Petitioner's Motion for Stay and  
15 Abeyance is granted, and his Motions for Enlargement of Time are denied as moot.  
16 Petitioner's Motion for Discovery (ECF No. 128) and Respondents' Motion to Dismiss  
17 (ECF No. 154) are denied without prejudice.

18 II. **BACKGROUND**

19 On September 25, 2019, Petitioner initiated this federal proceeding by filing a *pro*  
20 *se* petition alleging six grounds for relief with numerous subclaims. (ECF No. 1.) The  
21 Court granted Respondents' first motion to dismiss in part determining that Ground 2(D1)  
22 will not be construed as a ground for relief, Grounds 2(K), (Y), (T), (U), (Y), (Z), and (A1)  
23 are unexhausted, the second portion of Ground 2(W) alleging that trial counsel failed to  
24 "request missing witness jury instruction" is unexhausted, and Grounds 3 and 4 are  
25 dismissed with prejudice. (ECF No. 68.) The Court also deferred a ruling on exhaustion  
26 and any procedural default of Grounds 2(B), (C), (D), (F), (Q), (R), and (B1). (*Id.*)

27 Respondents filed a second partial motion to dismiss. (ECF No. 71.) The Court  
28 granted Respondents' second partial motion to dismiss and dismissed Grounds 2(B), (C),

1 (D), (F), (Q), (R), and (B1) as procedurally barred. (ECF No. 80.) The Court found  
2 Grounds 2(K), (Y), (T), (U), (Y), (Z), (A1), and the second portion of Ground 2(W) alleging  
3 that trial counsel failed to “request missing witness jury instruction” unexhausted and  
4 instructed Petitioner to elect to dismiss his unexhausted claims, dismiss his entire petition  
5 without prejudice to return to state court to exhaust his unexhausted claims, or seek a  
6 motion for stay and abeyance to hold his exhausted claims in abeyance while he returns  
7 to state court to exhaust his unexhausted claims. (*Id.*)

8 Petitioner requested a stay and abeyance (ECF No. 83). On March 30, 2022,  
9 however, Petitioner filed a declaration of election to abandon unexhausted claims  
10 informing the Court of his intent to dismiss his unexhausted claims and pursue his  
11 remaining claims. (ECF No. 91.) The Court therefore granted Petitioner’s request to  
12 dismiss his unexhausted claims and denied his motion for stay and abeyance as moot.  
13 (ECF No. 96.)

14 In July 2023, Petitioner filed a counseled amended petition. (ECF No. 122.)  
15 Petitioner concedes that he raises Grounds Two, Three, Four, and Six in his amended  
16 petition for the first time. (ECF No. 162 at 2.) He also asserts that some of his claims rely  
17 on new evidence that Petitioner was unable to develop during his *pro se* state post-  
18 conviction proceedings. (*Id.*) Petitioner is currently presenting Grounds Two, Three, Four,  
19 and Six in state court and requests that the Court stay his federal habeas case while he  
20 exhausts his claims in state court. (*Id.*)

21 **III. DISCUSSION**

22 A district court is authorized to stay an unexhausted petition in “limited  
23 circumstances” to allow a petitioner to present unexhausted claims to the state court  
24 without losing his right to federal habeas review due to the relevant one-year statute of  
25 limitations. *Rhines v. Weber*, 544 U.S. 269, 273-75 (2005); *Mena v. Long*, 813 F.3d 907,  
26 912 (9th Cir. 2016) (holding that district courts have authority to stay and hold in  
27 abeyance both mixed petitions and “fully unexhausted petitions under the circumstances

1 set forth in *Rhines*). Under the *Rhines* test, “a district court must stay a mixed petition  
 2 only if: (1) the petitioner has ‘good cause’ for his failure to exhaust his claims in state  
 3 court; (2) the unexhausted claims are potentially meritorious; and (3) there is no indication  
 4 that the petitioner intentionally engaged in dilatory litigation tactics.” *Wooten v. Kirkland*,  
 5 540 F.3d 1019, 1023 (9th Cir. 2008) (citing *Rhines*, 544 U.S. at 278).

6 The Ninth Circuit has acknowledged that the *Rhines* “good cause” standard does  
 7 not require “extraordinary circumstances.” *Wooten*, 540 F.3d at 1024 (citing *Jackson v.*  
 8 *Roe*, 425 F.3d 654, 661-62 (9th Cir. 2005)). But courts “must interpret whether a petitioner  
 9 has ‘good cause’ for a failure to exhaust in light of the Supreme Court’s instruction  
 10 in *Rhines* that the district court should only stay mixed petitions in ‘limited  
 11 circumstances.’” *Wooten*, 540 F.3d at 1024 (citing *Jackson*, 425 F.3d at 661). Courts  
 12 must also “be mindful that AEDPA aims to encourage the finality of sentences and to  
 13 encourage petitioners to exhaust their claims in state court before filing in federal  
 14 court.” *Wooten*, 540 F.3d at 1024 (citing *Rhines*, 544 U.S. at 276-77).

15 A statement that a habeas petitioner was *pro se* during his state post-conviction  
 16 proceedings is sufficient to constitute good cause for failing to exhaust claims. *Dixon v.*  
 17 *Baker*, 847 F.3d 714, 721 (9th Cir. 2017) (citing *Martinez v. Ryan*, 566 U.S. 1, 17 (2012)).  
 18 “A petitioner who is without counsel in state postconviction proceedings cannot be  
 19 expected to understand the technical requirements of exhaustion and should not be  
 20 denied the opportunity to exhaust a potentially meritorious claim simply because he  
 21 lacked counsel.” *Dixon*, 847 F.3d at 721.

22 Petitioner has shown good cause for his failure to exhaust his claims in state court  
 23 because he was not represented by post-conviction counsel. (ECF No. 165 at 4-5.)  
 24 Respondents assert that a stay would be futile and wasteful because, based on *Shinn v.*  
 25 *Ramirez*, 596 U.S. 366 (2022), the Court may not consider new evidence upon return to  
 26 this Court following a stay. The Court, however, need not reach a determination at this  
 27 time whether the Court will entertain new evidence upon a return to this Court following a

1 stay. *Ramirez* does not concern the good cause requirement for a *Rhines* stay. In addition  
 2 to Petitioner's lack of post-conviction counsel, Petitioner asserts that he presents a  
 3 colorable argument that the state court can review his claims on the merits because he  
 4 is actually innocent.<sup>1</sup>

5 A claim is potentially meritorious unless "it is perfectly clear that the [petitioner]  
 6 does not raise even a colorable federal claim." *Cassett v. Stewart*, 406 F.3d 614, 624 (9th  
 7 Cir. 2005). Petitioner establishes that "at least one of his unexhausted claims is not 'plainly  
 8 meritless.'" *Dixon*, 847 F.3d at 722. There is also no indication that Petitioner has  
 9 intentionally engaged in dilatory litigation tactics. Accordingly, the Court will grant  
 10 Petitioner's motion for stay and abeyance.

#### 11 **IV. CONCLUSION**

12 It is therefore ordered that Petitioner Justin Odell Langford's Motion for Stay and  
 13 Abeyance (ECF No. 162) is granted.

14 It is further ordered that Petitioner's Motion for Discovery (ECF No. 128) is denied  
 15 without prejudice.

16 It is further ordered that Respondents' Motion to Dismiss (ECF No. 154) is denied  
 17 without prejudice to the reassertion of any and all defenses then applicable following the  
 18 stay, following upon a scheduling order directing a response.

19 It is further ordered that Petitioner's Motions for Enlargement of Time (ECF Nos.  
 20 166, 167, 168, 169) are denied as moot.

21 It is further ordered that this action is stayed pending exhaustion of the  
 22 unexhausted claims in the amended petition.

23 It is further ordered that the grant of a stay is conditioned upon Petitioner filing, if  
 24 same is not already pending, a state post-conviction petition or other appropriate

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 26 <sup>1</sup>See *Schlup v. Delo*, 513 U.S. 298 (1994); *Lee v. Lampert*, 653 F.3d 929, 932 (9th  
 27 Cir. 2011) (en banc) (A "credible claim of actual innocence constitutes an equitable  
 28 exception to AEDPA's limitations period, and a petitioner who makes such a showing may  
 pass through the *Schlup* gateway and have his otherwise time-barred claims heard on  
 the merits.").

1 proceeding in state district court within 45 days of entry of this order and returning to  
2 federal court with a motion to reopen within 45 days of issuance of the remittitur by the  
3 Supreme Court of Nevada at the conclusion of all state court proceedings.<sup>2</sup>

4 It is further ordered that with any motion to reopen filed following completion of all  
5 state court proceedings, Petitioner: (a) shall attach supplemental exhibits containing the  
6 new state court pleadings and the state court written decisions thereon; and (b) if  
7 Petitioner intends to amend the federal petition, shall file a motion for leave to amend  
8 along with the proposed amended petition or a motion for extension of time to move for  
9 leave.

10 The Clerk of Court is directed to administratively close this action until such time  
11 as the Court grants a motion to reopen the matter.

12 It is further ordered that the Court will reset the briefing schedule upon reopening  
13 the case and lifting the stay.

14 DATED THIS 30<sup>th</sup> Day of May 2024.



15  
16 MIRANDA M. DU  
17 CHIEF UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup>If *certiorari* review will be sought or thereafter is being sought, either party may  
28 move to extend the stay for the duration of such proceedings. Cf. *Lawrence v. Florida*,  
549 U.S. 327, 335 (2007).